



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON

A-51705

all

November 12, 1942

Honorable Elmer Thomas,

United States Senate.

My dear Senator:

Further reference is made to your letter of September 29, 1942, acknowledged October 1, relative to settlement No. 3190115(orig) of August 21, 1942, wherein were disallowed the claims of Frank O. Jones for reimbursement of expenses allegedly incurred by him as chairman of the Sac and Fox Business Committee during the periods June 12 to 19, 1931, and August 22 to 29, 1933, in the amounts of \$36.67 and \$36.32, respectively.

Your letter is as follows:

"I resubmit the above numbered claim as the same is a charge against Indian Tribal trust fund for services performed on behalf of the Sac and Fox Tribe of Indians, Oklahoma. The claim was authorized by said tribe for services authorized by the Indian Council.

"I am of the opinion that your decision dated August 21, 1942 respecting this claim is an error as this class of claim does not come within the purview of the Act of Oct. 9, 1940. I am advised that the Sac and Fox Tribe of Oklahoma has a sufficient amount in the Treasury to pay this claim.

"Will you kindly look into this matter again and see if this service claim cannot be paid promptly. I enclose all papers in the case for your consideration".

The pertinent vouchers, executed by the claimant May 3, 1941, were transmitted by the Office of Indian Affairs, under date of February 9, 1942, to this office for settlement, the said claim in the

amount of \$36.67 covering the period June 12 to 19, 1931, proposed to be charged to the appropriation account "Proceeds of Labor, Sac & Fox Indians, Oklahoma (Support, 1931)", being administratively approved for payment; and the claim in the amount of \$36.32 covering the period August 22 to 29, 1933, proposed to be charged to the appropriation account "Proceeds of Labor, Sac & Fox Indians, Oklahoma (Tribal Council)", being administratively disapproved for the reason that there was no appropriation available for such payment for the fiscal year 1934.

After having obtained further information requested from the Office of Indian Affairs, this office disallowed both claims for reasons stated in the said settlement as follows:

"Your claim for reimbursement in connection with travel performed as Chairman, Sac and Fox Business Committee, during the period August 22 to 29, 1933, has been carefully examined and it is found that no part thereof may be allowed for the reasons hereinafter stated.

"During the fiscal year 1934, no appropriated monies were available to pay the amount involved. Accordingly, since the payment of claims by the United States is dependent upon a specific appropriation, it must be held that in the absence of such appropriation there is no authority of law for payment of the instant claim.

"I therefore certify that no balance is found due you from the United States".

"Your claim for reimbursement in connection with travel performed during the period June 12 to 19, 1931, is returned together with a copy of Public Act No. 820, 76th Congress, approved October 9, 1910, which is self-explanatory."

Section 27 of the act of May 18, 1916, 39 Stat. 158, provides, in part, as follows:

"\* \* \* That thereafter no money shall be expended from Indian tribal funds without specific appropriation by Congress except as follows: Equalization of allotments, education of Indian children in accordance with existing law, per capita and other payments, all of which are hereby continued in full force and effect; \* \* \*"

Section 1 of the act of May 17, 1926, 44 Stat. 560, provides:

"That hereafter all miscellaneous revenues derived from Indian reservations, agencies, and schools, which are not required by existing law to be otherwise disposed of, shall be covered into the Treasury of the United States under the caption 'Indian moneys, proceeds of labor,' and are hereby made available for expenditure, in the discretion of the Secretary of the Interior, for the benefit of the Indian tribes, agencies, and schools on whose behalf they are collected, subject, however, to the limitations as to tribal funds, imposed by section 27 of the Act of May 18, 1916 (Thirty-ninth Statutes at Large, page 159)."

In view of the quoted statutory provisions, and there having been no pertinent appropriation made by the Congress for the fiscal year 1934, it seems clear that payment of the said claim from "tribal funds" in the amount of \$36.32 covering the period August 22 to 29, 1933, is not authorized. Approval by the tribal council cannot be effective to authorize such payment contrary to the said statutory requirements. See 16 Comp. Gen. 268. In this connection, it is to be noted that the current appropriation for expenses of tribal councils is not made available for expenses of prior years (Interior Department Appropriation Act, 1943, approved July 2, 1942, Public Law 43, 77th Congress, page 25); and the same is true, also, of the appropriation for such expenses for the fiscal year 1942 (act of June 28, 1941, 55 Stat. 327). It may be stated in this connection that this item of appropriation appeared for the first time in the Indian

Office Appropriation Act for the fiscal year 1935, act of March 2, 1934, 48 Stat. 378.

With respect to the other claim, in the amount of \$36.67 covering the period June 12 to 19, 1931, there appears no question as to the availability of an appropriation, inasmuch as such appropriation was provided by the act of May 14, 1930, 46 Stat. 279, 301, providing in part as follows:

"For general support of Indians and administration of Indian property under the jurisdiction of the following agencies, to be paid from the funds held by the United States in trust for the respective tribes, in not to exceed the following sums, respectively:

\* \* \*

"Oklahoma: \* \* \* Sae and Fox, \$3,000; \* \* \*."

However, there is for consideration the act of October 9, 1940, 54 Stat. 1061, referred to in your letter, providing as follows:

"That every claim or demand (except a claim or demand by any State, Territory, possession or the District of Columbia) against the United States cognizable by the General Accounting Office under section 305 of the Budget and Accounting Act of June 10, 1921 (42 Stat. 24), and the Act of April 10, 1928 (45 Stat. 413), shall be forever barred unless such claim, bearing the signature and address of the claimant or of an authorized agent or attorney, shall be received in said office within ten full years after the date such claim first accrued: Provided, That when a claim of any person serving in the military or naval forces of the United States accrues in time of war, or when war intervenes within five years after its accrual, such claim may be presented within five years after peace is established.

"Sec. 2. Whenever any claim barred by section 1 shall be received in the General Accounting Office, it shall be returned to the claimant, with a copy of this Act, and such action shall be a complete response without further communication."

Certain claims of Indians, including the instant claims, are

"recognizable by the General Accounting Office" and come before this office for settlement; but a question arises as to whether such claims as those now under consideration are claims "against the United States" within the meaning of the said act of October 9, 1940. Although tribal funds are, to a considerable extent, in the status of public funds and subject to the restrictions applicable to public funds (7 Comp. Gen. 651; 6 Comp. Gen. 73), nevertheless they are trust funds belonging in fact to the Indians and are to be used exclusively for their benefit. 16 Comp. Dec. 20. It has been held that section 3736, Revised Statutes, prohibiting purchase of land "on account of the United States except under a law authorizing such purchase" is not applicable to purchase of land by the United States to be held in trust for Indians. 19 Comp. Gen. 175; 5 Comp. Gen. 661. See, also, 20 Comp. Gen. 387.

In view of the foregoing, I am of the opinion that the instant claims are not claims "against the United States" within the meaning of the act of October 9, 1940, supra. Accordingly, I am directing the allowance of the said claim in the amount of \$36.67, covering the period June 12 to 19, 1931, if otherwise correct; but, as hereinbefore set out, the action of this office in disallowing the other claim in the amount of \$36.32 appears correct and may not be disturbed.

A-51703

- 6 -

The enclosures transmitted with your letter are returned herewith.

Sincerely yours,

WILLIAM J. DAVIS

Comptroller General  
of the United States.

Enclosures.